IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6552 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASWANTBHAI K PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MS ROOPAL R PATEL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/12/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the notice issued by the Deputy Collector, Gandhinagar dtd.10/4/1993 passed under Rule 4 of the Bombay Stamp (Determination of Market Property) Rules, 1984 (hereinafter referred to as “the Rules” for convenience), while initiating the proceedings under sec.32-A of the Bombay Stamp Act, 1958 (hereinafter referred to as “the Act” for convenience). The petitioner has also challenged the notice issued by the Deputy Mamlatdar and Ex-offitio Recovery Officer (Stamp Duty and Registration Fee), Surat dtd.3/7/1995 under sec.200 of the Bombay Land Revenue Code (hereinafter referred to as “the Code” for convenience) for recovery of Rs.77,576=00.

2. It appears from the record that the petitioner has purchased the property in question by a registered Sale-deed dtd.29/12/1989 and the said document was presented before the Sub-Registrar, Surat. As Dy.Collector was of the opinion that the property was under valued and proper stamp duty was not used, proceedings came to be initiated under sec.32-A of the Act and the impugned notice dtd.10/4/1993 under Rule 4 of the Rules, asking the petitioner to show cause as to why an order directing the petitioner to pay Rs.30,177=00 towards deficit stamp duty and Rs.250=00 by way of penalty, in all Rs.30,427=00 should not be passed considering the market value of the property in question of Rs.3,32,119=00 instead of 52,570=00. It appears from the record that the petitioner submitted reply to the said show cause notice dtd.20/4/1993. However, the petitioner has not mentioned in the petition that what has happened thereafter. It appears from

the record that thereafter the impugned attachment notice came to be issued by the Dy.Mamlatdar and Ex-offitio Recovery Officer, Surat dtd.3/7/1995 calling upon the petitioner to pay Rs.77,576=00 =00 towards deficit stamp duty and penalty, which is challenged by the petitioner in the present petition.

3. So far as the challenge to the notice at Annexure-A issued under Rule 4 of the Rules is concerned, it appears that thereafter final order came to be passed under sec.32-A, which is not challenged by the petitioner and so far as the challenge to the notice issued by the Dy.Mamlatdar and Ex-officio Recovery Officer under sec.200 of the Code dtd.3/7/1995 is concerned, the same is a consequential attachment notice to the order passed by the Dy.Collector under sec.32-A of the Act and unless the main order passed under sec.32-A of the Act is not challenged and/or any order is obtained by

the petitioner, it cannot be said that the attachment notice issued under sec.200 of the Code dtd.3/7/1995 is in any way illegal or arbitrary which requires to be quashed and set aside by this Court. Under the circumstances, in absence of any challenge to the main order passed by the Dy.Collector under sec.32-A of the Act, no relief can be granted in favour of the petitioner.

4. For the reasons stated hereinabove, the petition fails and the same is dismissed. Ad-interim relief granted earlier stands vacated forthwith.

(M.R. SHAH,J.)

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